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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 752

In the Matter

of

GEORGE ARKY, formerly doing business as Lawrence Electric Construction Co., Bankrupt,

Petitioner,

LOUIS P. ROSENBERG, Trustee,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

MICHAEL HALPERN,
Attorney for Petitioner,
No. 1450 Broadway,
New York City.

GETTINGER & GETTINGER,
Of Counsel.

LEWIS HERMAN,
On the Brief.

THE COURT PRESS, 130 Cedar Street, N. Y. C.

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GEORGE ARKY, formerly doing business as Lawrence Electric Construction Co., Bankrupt,

Petitioner,

LOUIS P. ROSENBERG, Trustee,

Respondent.

Petition for Writ of Certiorari.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, George Arky, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit entered on December 3rd, 1943, affirming on different grounds the judgment of the District Court for the Eastern District of New York, dated April 23rd, 1943.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

On April 25th, 1942, petitioner filed an involuntary petition in bankruptcy. The same day an order of adjudication was entered (R., p. 1). On the 28th day of August, 1942, specifications of objection to the bankrupt's dis-

charge were filed by the Trustee, Louis P. Rosenberg with the Honorable Wilmot L. Morehouse, Referee in Bankruptcy (R., pp. 1 and 2).

Hearings were held and testimony taken thereafter and as a result thereof, the Referee rendered a decision denying the bankrupt's discharge on the ground that prior to the filing of the petition in bankruptcy the said bankrupt issued a materially false financial statement and obtained a loan from the Public National Bank & Trust Company upon reliance thereon (R., pp. 33 and 35).

The facts in regard to the giving of this false financial statement were these. On August 9th, 1939, the Bankrupt issued a financial statement to the Public National Bank, and at the same time the bankrupt made a loan from the said Bank in the sum of $504. On this financial statement, the Referee found that the bankrupt set forth accounts payable in the sum of $1,100, whereas, actually his accounts payable amounted to $1,642.81 on the date in question, or a sum of about $500 in excess of the amount alleged by the bankrupt (R., p. 33).

The loan was made on August 15th, 1939, and the bankrupt made monthly payments of $42, until in February 1940, when there was a balance of $294. At that time, the loan was refinanced and finally paid in full on March 7th, 1941 (R., pp. 18, 22).

The testimony establishes, without contradiction, that at the time the petition in bankruptcy was filed, the loan had been fully paid off 13 months prior thereto; that the Public National Bank was not scheduled as a creditor and did not file a proof of claim for any amount at all (R., pp. 22 and 34).

On these facts, it was held that it was immaterial that the said loan had been fully paid prior to the filing of the petition in bankruptcy and that the said Public National Bank was not listed as and was not a creditor at the time of the filing of the petition (R., p. 34).

A petition for review of the Referee's decision was filed in the United States District Court for the Southern District of New York, and the same came on to be heard before the Hon. Robert A. Inch, a Judge of the said Court (R., pp. 1 and 36).

On April 23, 1943, the said Referee's order denying the discharge to the bankrupt was affirmed by the United States District Court. Judge Inch held that it was not required that the financial statement be given at any particular time prior to the bankruptcy, and that payment of the creditor prior to the filing of the bankruptcy petition did not justify granting a discharge. He did, however, indicate that he hoped Congress would make a different rule (R., p. 36).

On May 23rd, 1943, a notice of appeal from said order was filed to the Circuit Court of Appeals for the Second Circuit (R., p. 39).

On December 3rd, 1943, the Circuit Court of Appeals for the Second Circuit handed down its decision confirming the order of the United States District Court above stated and denying a discharge to the bankrupt.

In denying discharge to the bankrupt, the said Circuit Court of Appeals considered the question that the loan obtained by means of the false financial statement had been fully paid prior to the filing of the petition in bankruptcy. In deciding adversely to this petitioner, the said Circuit Court of Appeals ruled that it was immaterial when the false financial statement was issued and whether or not the loan secured thereby was paid prior to the filing of the petition in bankruptcy.

Throughout these proceedings and in the appeals above indicated, the bankrupt appeared by Gettinger & Gettinger, as his attorneys. The Trustee, Louis P. Rosenberg, appeared in person (R., p. 1).

Jurisdiction.

The jurisdiction of the Supreme Court of the United States is invoked under the act of February 13th, 1925 (C. 229; 43 Stat. 938) amending the Judicial Code, Section 240; Title 28 U. S. C. A., Section 347. The judgment sought to be reviewed is that of the United States Circuit Court of Appeals for the Second Circuit entered on July 24th, 1942 (R., p. 45), affirming on different grounds the decision of the District Court for the Southern District of New York.

Questions Presented.

1. Whether a discharge may be denied to a bankrupt upon and based on matters unconnected in any way with the proceedings before the Court.

2. Whether the issuance of a false financial statement by the bankrupt three years before the petition in bankruptcy is filed and the obtaining of a loan thereby, which loan was fully paid as it became due, also some years prior to the filing of the petition in bankruptcy, is sufficient ground for the denial of the discharge to the bankrupt.

Reasons Relied Upon for the Allowance of the Writ.

1. The decision of the Circuit Court of Appeals as to the denial of the discharge to a bankrupt on the ground that said bankrupt issued a false financial statement, by means of which he obtained property, even though both the financial statement and the repayment of said loan as it became due took place years before the filing of the petition in bankruptcy, involves a question

of Federal law which has not been but should be settled by this Court.

There is considerable conflict and confusion in the Bankruptcy Courts in regard to the construction and application of the Statute Section 14c (3) of the Bankruptcy Act which states the following:

> "A bankrupt may be denied a discharge if he has
>
> * * *
>
> (3) obtained money or property on credit or obtained an extension or renewal of credit by making or publishing or causing to be made or published in any manner whatsoever a materially false statement in writing respecting his financial condition."

In the case at bar, the above provision was construed by the Circuit Court of Appeals to mean that a false financial statement issued years before the bankruptcy may be the basis for denial of a discharge and further that it will not matter that the loan obtained thereby was paid off when due, also some years prior to the bankruptcy.

On the other hand, however, Remington on Bankruptcy (5th Edition, Vol. 7—Section 3340) quotes with approval a contrary rule laid down in what Professor Remington termed "a well considered case", viz., *In re Milhoff*, 40 A. B. R. 72 (Special Master Ohio affirmed by District Court). This case holds that while the Statute (*supra*) contains no limitation as to time, it is a matter of common sense to state that the objection to the discharge must bear some connection with the subject matter of the bankruptcy proceedings.

Accordingly, where a creditor to whom the false financial statement was issued was fully paid prior to the filing of the petition and there was no one who was in any way

damaged by the statement in question, the same cannot be the basis for the denial of the discharge.

This rule was also enunciated by other authorities.

See *Brandenburg on Bankruptcy* (3rd Edition—Section 370);
In re Gilpin, 160 Fed. 171, modified 165 Fed. 607 (D. C. Pa.);
In re Terens, 176 Fed. 938 (D. C. E. D. Wisconsin).

The same view was reiterated in the *Matter of Weinstein*, 34 Fed. (2) 964 (District Court of California), stating as follows:

> "I do not believe that Congress intended to bar the door to a sinner who has repented. I do not believe that the sins of a lifetime which are wholly unrelated to a matter before a Court should be regarded by a Court unless it appear that the sinner is unrepentant and still engaged in his evil course."

In the case of *Josephs* v. *Powell & Campbell*, 213 Fed. 627, the District Court was reversed by the Circuit Court of Appeals for the Second Circuit and a discharge denied to the bankrupt on the express ground that at the time of the filing of the bankruptcy petition, the debt obtained by means of the false financial statement was still unpaid.

The ruling of the Court below in the case at bar is the first decision of a Circuit Court of Appeals on the point involved, and as such is in conflict with the authorities above set forth. It concerns an important point of construction of the Federal Bankruptcy Act, and it is respectfully submitted that the doubt and contradiction in the various Federal Courts on this point should be resolved by this Court.

Some Federal Courts expressed opinion pointing to the need that this point be settled by reliable authority—

> "There is no well considered case involving this question although there are some that bear upon it."
>
> *In re Milhoff* (*supra*).

In the case at bar, Judge Inch in the United States District Court thought that Congress should settle the point in controversy (R., p. 36).

The great importance of the statute (Section 14c (3) Federal Bankruptcy Act) involved to the business world and the legal profession and the need of one authoritative decision on the question involved (as to the time within which a false financial statement can be considered as bearing upon the bankrupt's rights to a discharge and the effect of payment to all creditors who relied on said statement prior to the filing of the bankruptcy petition), justify the granting of a review by certiorari to the petitioner.

WHEREFORE, it is respectfully submitted that the petition should be granted.

MICHAEL HALPERN,
Attorney for Petitioner,
No. 1450 Broadway,
New York City.

IN THE

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No.

In the Matter

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GEORGE ARKY, formerly doing business as Lawrence Electric Construction Co., Bankrupt,

Petitioner,

LOUIS P. ROSENBERG, Trustee,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion of the Court Below.

The Circuit Court of Appeals for the Second Circuit affirmed the judgment of the United States District Court for the Southern District of New York, denying a discharge to the petitioner herein without an opinion. The opinion in the United States District Court rendered by Judge Inch does not seem to be officially reported as yet.

II.

Jurisdiction.

The judgment sought to be reviewed is that of the United States Circuit Court of Appeals for the Second Circuit, dated December 3rd, 1943 affirming a judgment of the District Court for the Southern District of New York which denied a discharge in bankruptcy to the petitioner. The judgment to be reviewed involves a construction of Section 14c-3 of the Federal Bankruptcy Act.

This Court has jurisdiction to review the said judgment of the Circuit Court of Appeals for the Second Circuit under Section 240 of the Judicial Code, Title 28 U. S. C. A., Section 347 as amended under the Act of February 13th, 1925 (C. 229:43 Stat. 938), also Act of March 8th, 1934.

The revised rules of this Court adopted February 13th, 1939 and amended March 25th, 1940, October 21st, 1940 and May 26th, 1941, state among others (Rule 38-5), that a review on a writ of certiorari may be granted where a Circuit Court of Appeals has decided an important question of Federal Law which has not been, but should be settled by this Court.

Judgment sought to be reviewed herein involves a point of construction of Section 14c-3 of the Bankruptcy Act never passed upon by this Court or by any Circuit Court of Appeals other than the Court below in its holding in the case at bar.

III.

Statement of the Case.

Proceedings in bankruptcy were instituted by the bankrupt, George Arky on April 25th, 1942 by the filing of a voluntary petition resulting in his adjudication on the same day (R., p. 1). The Trustee in bankruptcy filed specifications of objections to the bankrupt's discharge on August 28th, 1942, consisting of grounds numbered 1 and 2 (R., pp. 1 and 2). The latter was subsequently withdrawn by the Trustee and evidence was offered solely as to number 1 (R., p. 33).

After hearings conducted, the Referee in Bankruptcy found that on August 9th, 1939, the Bankrupt issued a financial statement to the Public National Bank and received a loan of $504 on the strength of an endorsement and the said financial statement (R., p. 33).

The loan was paid off at the rate of $42 a month until February 1940, when it was refinanced to reduce the payments. The loan was paid off on March 7th, 1941, a year and over a month prior to the time the petition in bankruptcy was filed (R., p. 22).

The bankrupt was an electrician, employed one girl, did not employ a bookkeeper and kept his own books. His experience was limited as he was in business but a short time (R., pp. 12, 13).

The financial statement in question set forth bankrupt's accounts payable in the sum of $1100. Actually the Referee found that on the day in question the accounts payable amounted to $1642.81 (R., p. 33).

Accordingly, the Referee found that the specification of objection to the discharge was sustained. He overruled bankrupt's contention that since the loan was repaid prior to the bankruptcy the false statement would not constitute a bar to his discharge (R., pp. 34, 35).

The Referee cited in support of this holding, *In re Ernst*, 107 Fed. (2) 760, although it is difficult to see how this case could be an authority for the Referee's point since the denial of a discharge was predicated therein on the proposition that the creditor to whom the false financial statement was issued had been only partially paid off.

The Referee's decision was appealed to the United States District Court for the Southern District. In affirming the Referee, Judge Inch indicated a hope for Congressional action to change the holding he felt constrained to follow, stating,

> "It was not required that the statement be given any particular time prior to the bankruptcy, and until Congress does so this Court must follow—*Remington on Bankruptcy* (5 ED) Vol. 7, Section 3339.50; *In re Tereus*, 172 Fed. 938" (R., p. 36).

In examining the authorities cited by Judge Inch, we find that Section 3339.50 of Remington on Bankruptcy deals with the date of the financial statement without regard as to whether or not the loan secured thereby was paid. The latter situation is discussed in Section 3340 as hereinafter will appear. *In re Tereus* (*supra*) is authority for the petitioner, holding that regardless of the date of the statement, discharge will be denied provided, however, that property has been obtained on the strength thereof within four months of the bankruptcy.

The Circuit Court of Appeals for the Second Circuit affirmed Judge Inch's decision without an opinion.

IV.

Specifications of Error.

1. The Court of Appeals erred in construing Section 14c-3 of the Bankruptcy Act to mean that it provides for the denial of a discharge on matters entirely unconnected with the subject matter of the proceedings.

2. The Circuit Court of Appeals erred in construing Section 14c-3 of the Bankruptcy Act to mean that a false financial statement issued years before the Bankruptcy, may be the basis for denying a discharge even though the loan secured thereby has been paid off in full, years prior to the filing of the petition.

3. The Circuit Court of Appeals erred in denying the discharge to petitioner based on its construction of Section 14c-3 of the Bankruptcy Act, when the bank to which the false financial statement was issued ceased to be a creditor at the time of the bankruptcy.

V.

Summary of the Argument.

1. A discharge should not be denied to the bankrupt on the basis of having issued a false financial statement, when the loan obtained thereby has been fully paid off prior to the bankruptcy.

2. The doctrine that one coming into equity should do so with clean hands, does not extend to matters unconnected to the subject matter of the proceedings before the Court.

VI.

Argument.

POINT I.

A discharge should not be denied to the bankrupt on the basis of having issued a false financial statement, when the loan obtained thereby has been fully paid off prior to the bankruptcy.

Section 14c (3) of the Bankruptcy Act provides the following:

> "A bankrupt may be denied a discharge if he has
>
> (3) obtained money or property on credit or obtained an extension or renewal of credit by making or publishing or causing to be made or published in any manner whatsoever a materially false statement in writing respecting his financial condition."

Remington on Bankruptcy (5th Edition), 7th Vol., Section 3340, in discussing the effect of paying the defrauded creditor prior to the bankruptcy, sets forth the doctrine that such payment would nullify the reason for denying a discharge.

In support of this view, Professor Remington cites the case of *In re Milhoff*, 40 A. B. R. 72 (Special Master Ohio, affirmed by District Court), a "well considered case", where the Referee reviewed all the authorities on the point and came to the conclusion that the gist of the wrong done because of which the bankrupt is to lose his right to his discharge, is fraud and deceit. Accordingly, if at the time of bankruptcy there is no creditor who has

been defrauded, there can be no objection to the discharge under the Section.

> "* * * the gist of the wrong perpetrated by the bankrupt because of which under this section bankrupt is to be denied his discharge, is fraud, deceit. It is because he has knowingly defrauded a person by securing credit. If at the time of bankruptcy there is no person who has been defrauded how can it be said that there is room for objection under this section?"

> "It would seem to me to be a more reasonable inference, from the language of the Act, that Congress meant a creditor at the time of bankruptcy than that it meant a past creditor, who, ten or twenty years or longer before bankruptcy had extended credit on a false statement and been paid in accordance with the terms of credit extended * * * I quite agree with him, that if, at the time of bankruptcy there exists no creditor unpaid because of credit extended upon a false statement, it would be harsh, indeed, if not shocking, to common sense to hold that the mere fact of extending credit without actual defrauding of the creditor, could be relied on as a basis of discharge opposition, regardless of what period in the life of the bankrupt this had occurred."

The same view was expressed by Brandenburg on Bankruptcy (30 Edition, Section 370),

> "While no specific time is fixed by the Statute within which such statement must have been made, by analogy to other provisions of the law, it is evident that Congress intended that the statement must have been made within four months of the institution of the bankrupt's proceedings."

In the case of *In re Ernst*, 107 Fed. (2) 760 (Circuit Court of Appeals, Second Circuit 1939), the decision granting the bankrupt's discharge in the District Court was reversed on the reasoning that the false financial statement issued by the bankrupt was instrumental in obtaining two loans from one of his creditors and *one of such loans has not yet been paid off*.

The bankrupt's discharge was denied in the case of *Josephs* v. *Powell & Campbell* (*supra*) where the Court below overruled the District Court. The District Court gave permission to the bankrupt to pay the creditors that relied on the false financial statement *nunc pro tunc*. This was reversed, the Circuit Court of Appeals specifically basing the denial of the discharge on the fact that the creditors involved were not paid prior to the filing of the bankruptcy petition.

The case of *In re Terens*, 172 Fed. 938, cited by Judge Inch in the United States District Court, in the holding below denying discharge, is in effect authority in favor of petitioner, ruling that the date of the false financial statement is immaterial provided, however, property on the strength of it is obtained during the four month period preceding the bankruptcy. (The fact is, of course, in the case at bar, that the loan was obtained two years prior to the bankruptcy and paid off over a year prior thereto (R., p. 22).)

POINT II.

The doctrine that one coming into equity should do so with clean hands, does not extend to matters unconnected to the subject matter of the proceedings before the Court.

It may be urged against the petitioner that a bankruptcy proceeding is essentially a proceeding in equity, and that he who comes into equity for some relief must do so with clean hands; that petitioner having once in his lifetime soiled his hands by the uttering of a false financial statement, should now be forever barred from seeking equitable relief.

In a world of abstract perfection, such a doctrine may be conceivably recognized, but our Courts of equity have constantly refrained from probing the conscience and the cleanliness of hands of a litigant in regard to matters not connected with the case at bar. Indeed it is elementary that even equitable considerations must be relevant to the issues involved.

In a proceeding wherein a bankrupt seeks his discharge from his creditors, it appears absurd to contend that such discharge should be withheld based on a far-gone transaction in some by-gone year, wherein a false financial statement was given to one, an entire stranger to the bankruptcy proceedings, no longer a creditor and one whom the bankrupt has paid off in full 2, 5 or 10 years prior to the bankruptcy.

> "I do not believe that Congress intended to bar the door to a sinner who has repented. I do not believe that the sins of a lifetime which are wholly unrelated to a matter before a Court should be regarded by a

Court unless it appear that the sinner is unrepentant and still engaged in his evil course." *In re Weinstein*, 34 Fed. (2) 964 (District Court of California).

See also,

In re Terens (*supra*).

"The section of the Act here involved does not require that the property be unpaid for it merely requires that it be obtained on credit on a false statement, from a person making the latter a creditor. The natural inference from this language is, however, that the person remain a creditor. In other words, that to be a valid objection there must in bankruptcy be a person, who became a creditor under the circumstances described in this section, viz; by extending credit on a false statement made to him. To say that it refers to any person who at any time in the life of the bankrupt became his creditor under these circumstances, even though he was paid promptly in accordance with the terms of credit, would be rather absurd."

In re Milhoff (*supra*).

VII.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the questions herein involved and the conflict regarding thereto presently existing in the various Federal Courts, as hereinbefore pointed out, may be permanently settled by this Honorable Court, and the proper construction and interpretation made and

injustice prevented, and that to such end a writ of certiorari should be granted and this Court should review the decision of the said United States Circuit Court of Appeals for the Second Circuit, and finally reverse it.

Respectfully submitted,

MICHAEL HALPERN,
Attorney for Petitioner.
No. 1450 Broadway,
New York City.

GETTINGER & GETTINGER,
Of Counsel.

LEWIS HERMAN,
On the Brief.

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GEORGE ARKY, formerly doing business as Lawrence Electric Construction Co., Bankrupt,

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Respondent.

BRIEF OF RESPONDENT-TRUSTEE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

CHARLES E. BERNSTEIN,
Counsel for Respondent-Trustee, Louis P. Rosenberg.

LOUIS P. ROSENBERG,
Of Counsel.

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Respondent.

BRIEF OF RESPONDENT-TRUSTEE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The Circuit Court unanimously affirmed the order of the District Court denying a discharge in bankruptcy to the petitioner.

The Facts.

The bankrupt filed a voluntary petition in bankruptcy on April 30, 1942. On August 9, 1939, he borrowed the sum of $504 from Public National Bank and did on that day issue a financial statement in writing (Trustee's Exhibit I, p. 28) which has been found by the Courts below to be "materially false" (pp. 34, 36, 46).

The bankrupt discontinued business on December 31, 1939 (p. 15, fol. 44). On August 9, 1939, the date of the issuance of the financial statement, Williamsburg Electrical Supply Corp. was a creditor of the bankrupt

(Trustee's Exhibit II, p. 32), and the liability to this creditor is listed in the schedules filed by the bankrupt.

The indebtedness to Public National Bank was finally satisfied by the bankrupt on March 7, 1941 (p. 22, fol. 66), and the voluntary petition in bankruptcy was filed on April 30, 1942.

The Issue.

The record below presented for review the following question of law:

> Whether a discharge may be denied to a bankrupt because of the issuance of a false financial statement in writing respecting his financial condition, even though the loan was repaid about a year before the bankruptcy petition was filed.

No constitutional question is involved, but merely the interpretation of the requirements of the provisions of Section 14c (3) (11 U. S. C. A. Section 32 (c)(3)) of the Bankruptcy Act.

POINT I.

There is no necessity for a review by this tribunal. No constitutional question is involved and there is no conflict, as is claimed, among any of the circuits on the question here involved.

This proceeding involves the application of Section 14c (3) of the Bankruptcy Act (11 U. S. C. A. Sec. 32 (c)(3)). The bankrupt issued a false financial statement in writing to induce a loan of $504. The repayment of the indebtedness prior to the commencement of the bankruptcy proceedings did not excuse the bankrupt's

misconduct (*In re Ernst* (C. C. A. 2d), 107 F. (2d) 760; *Sadler* v. *Hirshberg Bros.* (C. C. A. 6th), 23 F. (2d) 245; *In re Weinstein*, 34 F. (2d) 964, D. C. S. D. Cal.).

To hold otherwise would encourage the issuance of false financial statements by debtors whose dishonesty and bad faith would be condoned by the repayment of the indebtedness to the defrauded creditor prior to commencement of bankruptcy proceedings. This would be a distortion of the spirit and intent of the Bankruptcy Act which has for its purpose the granting of discharges to only those who were honest in their dealings with creditors.

POINT II.

There is no conflict or confusion in the decisions which construe Section 14c(3) of the Bankruptcy Act (11 U. S. C. A. Sec. 32(c)(3)).

The ruling of the Circuit Court is not in conflict with the authorities referred to in the petition for the writ (pp. 5, 6). The facts in *In re Milhoff* (a Special Master's report, approved by the District Court), are clearly distinguishable, but even if the decision should appear contrary, it is significant that its reasoning has not been followed by other Courts in the many decisions relating to this subject which have since been rendered and indeed, was criticized in *Matter of Weinstein*, *supra*, where it is said:

> "I doubt the soundness of the reasoning of the special master in the *Milhoff* matter and do not find that this decision has met with approval by other courts."

Moreover, the false financial statement is not "unrelated" with the subject matter of the bankruptcy proceedings. This bankrupt issued a false financial statement

and engaged in this dishonest practice while conducting business in which he incurred the debts which he sought to discharge by the filing of the voluntary petition in bankruptcy. The bankrupt's misconduct was a matter properly investigated by the trustee in bankruptcy and, the establishment thereof, sufficient ground for a denial of the discharge.

The other contention made by this petitioner is that there should be an implied Statute of Limitations or a time limit within which a false financial statement may be effectively urged to bar a bankrupt's discharge. This issue was also raised, but overruled in *In re Weinstein*, *supra*:

> "It is not the policy of the law that a man dishonest at heart and who knowingly engages in fraudulent practices should be encouraged therein by raising a technical bar or time limit and be released from his obligations and permitted to again pray upon the business world. It is the character and conduct of the bankrupt towards his creditors at large which the court gives consideration, rather than conferring a power upon one particular creditor to grant or deny a release from the bankrupt's debts." * * *
>
> * * *
>
> "In view of these and many other similar statements of the courts, I can see no reason why the court should legislate into existence a statute of limitation when Congress has not seen fit to create such a limit. Neither do I find occasion to apply any rule of equity, assuming the court possesses such power, in favor of this bankrupt."

The decisions of the various Federal Courts are consistent and, wherever the question was raised, the Courts

have indicated that Congress did not enact a Statute of Limitations and accordingly, no such intent would be inferred. Judge Inch did not indicate "a hope for Congressional action to change the holding he felt constrained to follow" (p. 12 of petition for writ), but made the observation that there was no Statute of Limitations and until Congress enacted such statute, no time limitation would be assumed.

CONCLUSION.

It is respectfully submitted that the petitioner has shown no reason in law or in fact which would justify this Court in granting his petition for certiorari in this case, and that therefore, the petition should be dismissed.

Respectfully submitted,

CHARLES E. BERNSTEIN,
Counsel for Respondent-Trustee,
Louis P. Rosenberg.

LOUIS P. ROSENBERG,
Of Counsel.